

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 AS-01 DHA-02 CIAE-00 NSAE-00
NSCE-00 SSO-00 USIE-00 INRE-00 PM-04 H-01 INR-07
L-03 NSC-05 PA-01 PRS-01 SP-02 SS-15 /052 W
-----048663 140925Z /13

O 140845Z JUL 77

FM AMEMBASSY MANILA

TO SECSTATE WASHDC IMMEDIATE 2350

DEPTJUSTICE WASHDC IMMEDIATE

INFO CSAF(JACI) IMMEDIATE

CINCPAC IMMEDIATE

CINCPACAF IMMEDIATE

13AF CLARK IMMEDIATE

3CSG CLARK IMMEDIATE

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JUSTICE FOR RISTAU/FOREIGN LITIGATION UNIT

E. O. 11652: GDS

TAGS: MILI, RP

SUBJECT: PROPOSED REPLY TO DFA PROTEST ON NUGUID CIVIL SUIT

REF: MANILA 10772, DTG PR 140105Z JUL 77

1. EMBASSY PLANS REPLY ALONG FOLLOWING LINES ON 15 JULY
TO DFA IN RESPONSE TO NOTE TRANSMITTED REFTEL. QUOTE:

THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS
ITS COMPLIMENTS TO THE DEPARTMENT OF FOREIGN AFFAIRS OF
THE REPUBLIC OF THE PHILIPPINES AND HAS THE HONOR TO REFER
TO THE DEPRATMENT'S NOTE NO. 2044-77 CONCERNING A NEWS
ITEM UNDER THE HEADING OF "CLARK REJECTS SUMMONSES ON THREE
SERVICEMEN" WHICH APPEARED ON THE FRONT PAGE OF THE
TIMES JOURNAL OF 11 JULY 1977.

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THE EMBASSY HAS BEEN ASSURED AND IS CONVINCED THAT
THE BASE AUTHORITIES HAVE NO INTENTION OF VIOLATING THE
PROVISIONS OF THE US-RP MILITARY BASES AGREEMENT. AS
THE DEPARTMENT'S NOTE SUGGESTS, SERVICE OF PROCESS IS
ORDINARILY HANDLED IN A ROUTINE AND MUTUALLY
SATISFACTORY MANNER IN CONFORMANCE TO THE MILITARY BASES
AGREEMENT WHICH IS MERELY ONE DEMONSTRATION OF THE

RESPECT THAT BASE AUTHORITIES HAVE, AS THEY SHOULD, FOR
THE JURISDICTIONAL ARRANGEMENTS BETWEEN OUR GOVERNMENTS.

THE EMBASSY UNDERSTANDS, HOWEVER, THAT THE LAWSUIT
IN QUESTION DIFFERS FROM THE NORMAL PRIVATE ACTION
IN SEVERAL SIGNIFICANT ASPECTS. UNLIKE THE TYPICAL
SUIT, THE UNITED STATES GOVERNMENT IS SPECIFICALLY
NAMED AS A DEFENDANT WHICH WOULD INDICATE THE APPROPRIATE-
NESS OF SERVICE THROUGH THE DEPARTMENT OF FOREIGN AFFAIRS
IN ACCORDANCE WITH CUSTOMARY INTERNATIONAL PRACTICE.
MOREOVER, WE UNDERSTAND THAT THE SERVICEMEN INVOLVED
WERE ALLEGED BY COMPLAINANT TO HAVE BEEN ACTING IN
THEIR OFFICIAL CAPACITIES AS EMPLOYEES AND AGENTS OF
THE UNITED STATES GOVERNMENT. IT WOULD THEREFORE APPEAR
THAT THE COMPLAINANT'S ACTION ON ITS FACE IS, IN EFFECT,
DIRECTED AT THE UNITED STATES GOVERNMENT AND CONSTITUTES
ADDITIONAL JUSTIFICATION FOR SERVICE THROUGH THE
DEPARTMENT.

IN LIGHT OF THIS ADDITIONAL INFORMATION, THE
DEPARTMENT WOULD NO DOUBT AGREE THAT IT IS DIFFICULT

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13AF CLARK IMMEDIATE
3CSG CLARK IMMEDIATE

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JUSTICE FOR RISTAU/FOREIGN LITIGATION UNIT

TO COMPARE THW LAWSUIT IN QUESTION TO ACTIONS OF A

PURELY PRIVATE NATURE BROUGHT BY LANDLORDS FOR RENT
OR DEPENDENT WIVES FOR SUPPORT AGAINST INDIVIDUALS IN
THEIR PERSONAL AND PRIVATE CAPACITIES.

THE EMBASSY HAS BEEN ASSURED THAT BASE AUTHORITIES
ARE MINDFUL OF THE PROVISIONS OF PARAGRAPH 8 OF ARTICLE
XIII OF THE MILITARY BASES AGREEMENT PRESERVING AN
INJURED PARTY'S CIVIL REMEDIES IN THOSE CASES WHERE
THE UNITED STATES EXERCISES ITS CRIMINAL
JURISDICTION. THERE IS NO DISPUTE CONCERNING THE
VALIDITY OF THOSE PROVISIONS. ESSENTIALLY, THE PURPOSE
OF RETURNING THE CIVIL PROCESS TO THE COURT IN THIS
CASE WAS RESPECTFULLY TO ADVISE THE COURT THAT THE
MILITARY BASE WAS WITHOUT AUTHORITY TO ACCEPT SERVICE
ON BEHALF OF THE UNITED STATES GOVERNMENT. ONLY THE
EMBASSY HAS SUCH AUTHORITY.

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ADDITIONALLY, THE COURT'S ATTENTION WAS INVITED
TO THE FACT THAT ON ITS FACE THE COMPLAINT IS AGAINST
THE INDIVIDUALLY NAMED DEFENDANTS ACTING IN THEIR
OFFICIAL CAPACITY AS AGENTS AND EMPLOYEES OF THE UNITED
STATES GOVERNMENT. THUS, THE ACTION DID NOT APPEAR
TO BE DIRECTED AGAINST THE PROPER PARTY DEFENDANT.
THIS ADVICE WAS ISSUED PURSUANT TO THE AIRFORCE POLICY
OF WORLD-WIDE APPLICABILITY. NONETHELESS, IF THE
COURT UPON REFLECTION DOES NOT CONCUR THAT THE NAMED
INDIVIDUALS ARE NOT THE PROPER PARTY DEFENDANTS,
SERVICE OF PROCESS WILL BE ACCEPTED IN THE USUAL MANNER
WITHOUT OBJECTION. IN THE PHILIPPINES SUCH
SERVICE WOULD INCLUDE THE ASSISTANCE AND COOPERATION
OF THE BASE AUTHORITIES ENVISIONED IN THE UNIQUELY
FAVORABLE PROVISIONS OF ARTICLE XIV OF THE MILITARY
BASES AGREEMENT TO WHICH THE DEPARTMENT OF FOREIGN
AFFAIRS MAKES REFERENCE.

IT MAY BE THAT THE APPARENT MISUNDERSTANDING
CONCERNING SERVICE OF PROCESS IN THIS CASE RESULTED
FROM INARTFUL WORDING OR INSUFFICIENT CLARITY IN THE
LETTER TO THE COURT. IN ANY EVENT, THE EMBASSY WISHES
TO CONFIRM TO THE DEPARTMENT THE GOOD FAITH AND INTEN-
TION OF THE UNITED STATES MILITARY TO COMPLY FULLY WITH
THEIR OBLIGATIONS UNDER THE MILITARY BASES AGREEMENT.

USUAL COMPLIMENTARY CLOSING. END QUOTE

2. COMMENT: EMBASSY BELIEVES OVERREACTION OF JUSTICE
SECRETARY IS BASED ON MISAPPREHENSION OF FACTS AND
INTENTIONS WHICH MAY BE SHARED BY COURT. REQUEST

3CSG/JA OR 13THAF/JA CONFIRM THAT FINAL PARAGRAPH IS
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ACCURATE REFLECTION OF FACTS.

3. PLEASE ADVISE SOONEST AS TO ANY MODIFICATIONS
TO ENABLE US TO RESPOND IF POSSIBLE ON 15 JULY BEFORE
WEEKEND HIATUS DESCENDS UPON GOP OFFICIALS.

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